



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/170597

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 04, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a telephone hearing was held on May 04, 2016. Previously scheduled hearings set for January 6, 2016, February 3, 2016, March 2, 2016, and April 5, 2016, were rescheduled at petitioner's request.

The issue for determination is whether the respondent correctly denied a prior authorization request for speech and language therapy services (SLT) for the petitioner.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], MA, CCC, SLP (written appearance only)  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County. She is certified for MA/BCP.
2. Petitioner's provider submitted a prior authorization request on the petitioner's behalf for SLT. Service was requested at the level of twice weekly for 26 weeks. The respondent subsequently issued a written notice of denial.
3. The petitioner has a diagnosis of autism with speech delay. Her deficits include significant delays in receptive and expressive language development, social engagement, social interaction skills, and play skills.
4. The petitioner receives SLT at her school, and her providers regularly coordinate care.

### **DISCUSSION**

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability; ...
  3. Is appropriate with regard to generally accepted standards of medical practice; ...
  6. Is not duplicative with respect to other services being provided to the recipient; ...
  8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The code requires that a person must continue to improve for therapy to continue by meeting established and measureable goals over six months or continued ST will be denied. §DHS 107.18(3)(e). At some point the therapy program should be carried over to the home, without the need for professional intervention.

In addition, when speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

Prior hearing decisions have held consistently that where speech therapy is provided in school, it would not be cost effective for MA to cover private therapy. If the private therapy covers a situation that school therapy does not address, it has been found that the services are not duplicative. See, for example, Decision no. MPA-48/16180, dated August 21, 1997, where the evidence showed that the petitioner had a unique oral deficiency that the school therapist was not trained to address. Also see no. MPA-51/41838 (11-18-99), where the school therapist was working on building vocabulary while the private therapist was working on the physical process of vocalizing sounds.

Petitioner's representative provided substantial documentation of petitioner's providers' collaboration with petitioner's school therapist, as well as her respective providers' efforts to avoid duplication of services. In addition, she provided therapy notes demonstrating petitioner's progress to date. I also note that petitioner's representative provided testimony and documentation relating to alleged abuse of petitioner and petitioner's inability to effectively communicate with regard to the alleged abuse. In light of the well-documented progress, collaboration, and efforts to avoid duplication of services, I conclude that the petitioner has established the medical necessity of the requested speech therapy.

**Your provider will not receive a copy of this Decision. In order to have the service requested here, you must provide a copy of this Decision to [REDACTED]. The provider must then submit a new prior authorization request to receive the approved service.**

### **CONCLUSIONS OF LAW**

The denial of the PA request was incorrect, as the petitioner has established the medical necessity of the requested speech therapy.

**THEREFORE, it is**

### **ORDERED**

That [REDACTED] is hereby authorized to provide the petitioner with the requested speech and language therapy sessions and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 28th day of June, 2016

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 28, 2016.

Division of Health Care Access and Accountability